

PHILADELPHIA NEWSPAPERS, INC., : CIVIL ACTION
:
v. :
:
ARGENT VENTURES LLC : NO. 00-1808

This action arises out of a dispute concerning the sale of certain real property located in Philadelphia, Pennsylvania, at 440 N. Broad Street and 440 N. 15th Street. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 1). The seller, and Plaintiff in this Declaratory Judgment action, is Philadelphia Newspapers, Inc. ("PNI"). PNI is a Pennsylvania corporation, with its principal place of business located in Philadelphia, Pennsylvania. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 2). The Defendant in the above captioned action is Argent Ventures LLC ("Argent"). Argent is a limited liability company organized under New York Law, with its principal place of business in New York City. (See Pl.'s Opp.

to Def.'s Mot. to Dismiss at 2-3). Argent through its subsidiary Argent Acquisitions allegedly entered into a written contract with PNI to purchase the above referenced properties. (See Def.'s Mot. to Dismiss at 1). It is this alleged purchase agreement that is the subject matter of Plaintiff's declaratory judgment action, and the genesis of the conflict between PNI and Argent.

While Argent asserts that a binding agreement of sale was consummated between the parties on or about February 9, 2000, PNI maintains that no such agreement was reached because, inter alia, Argent rejected PNI's offer when it failed to accept the terms of a letter of intent; instead making counter-proposals which eliminated Argent's power of acceptance. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 2-4).

The Court need not consider the merits of Plaintiff's claims as they are not relevant the jurisdictional decision concerning the propriety of hearing the instant declaratory judgment action. The Court, however, acknowledges that it is undisputed from the parties papers that Argent and PNI were unable to resolve this matter despite ongoing discussions concerning settlement and the possible use of mediation. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 6-7). Furthermore, it is clear that Argent had informed PNI on several occasions of its willingness to litigate the matter should a resolution not be forthcoming. (See Letter of Def., dated Mar. 22, 2000, Mar. 30, 2000 & Apr. 10, 2000).

PNI filed the instant declaratory judgment action in federal court on April 7, 2000, apparently in the midst of the above mentioned settlement discussions. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 6-7; see also Def.'s Mot. to Dismiss at 7-9). Shortly thereafter, on April 13, 2000, Argent Acquisitions filed its Complaint in the Philadelphia Court of Common Pleas for breach of contract. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 7). PNI, on or about May 4, 2000, filed several Preliminary Objections, including an objection that Argent Acquisitions action is duplicative of a prior action commenced by PNI in United States District Court for the Eastern District of Pennsylvania. (See Pl.'s Opp. to Def.'s Mot. to Dismiss at 7 n.2).

II. DISCUSSION

The Declaratory Judgment Act, 28 U.S.C. § 2201(a)(1994), confers upon federal courts "unique and substantial discretion in deciding whether to declare the rights of litigants." See Wilton v. Seven Falls Co., 515 U.S. 227, 286, 115 S. Ct. 2137, 2142 (1995). As such, the Act is "an enabling Act which confers a discretion on the courts rather than an absolute right upon the litigants." Id. (citations omitted). The purpose of the Act is "to enable a person caught in controversy to obtain resolution of the dispute, instead of being forced to await the initiative of the antagonist." See National Foam, Inc. v. Williams Fire & Hazard Control, Inc., No. CIV.A.97-3105, 1997 WL 700496, at *7 (E.D. Pa.

Oct. 29, 1997) (quoting Genentech, Inc. v. Eli Lilly & Co., 998 F.2d 931, 937 (Fed. Cir. 1993)). Consequently, the Court cannot dismiss a declaratory action simply because affirmative litigation is subsequently brought by the antagonist. See id. Nevertheless, the Court may dismiss a declaratory action where it is shown that the such action was filed in anticipation of the impending litigation and motivated solely by considerations of forum shopping. See id.; see also IMS Health, Inc. v. Vality Tech., Inc., 59 F. Supp. 454, 463 (1999). In making such inquiry the Court may also consider "the amount of time between the declaratory and affirmative filings, with a shorter period indicating bad faith." IMS Health, Inc., 59 F. Supp. at 463. A district court's decision regarding the propriety of hearing a declaratory judgment action is reviewable only for abuse of discretion. See Wilton, 515 U.S. at 289-90, 115 S. Ct. at 2144.

In the instant matter, it appears obvious that Plaintiff's declaratory action is little more than an attempt to force the resolution of the underlying dispute in a federal forum, rather than state court. Especially because less than one week elapsed from the filing of Plaintiff's April 7, 2000, declaratory action and Defendant's April 13, 2000, state court complaint. Pursuant to 28 U.S.C. § 1441(b), Plaintiff is foreclosed from removing Defendant's Pennsylvania state court action to federal court as Plaintiff is itself a citizen of Pennsylvania. See 28 U.S.C. §

1441(b) (stating that "an action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought").

Given that removal of the state court complaint is precluded, for the Court to entertain Plaintiff's declaratory action clearly encourages and rewards forum shopping through the filing of anticipatory declaratory judgment actions. As Plaintiff would not have been able to avail itself of federal jurisdiction otherwise, the Court cannot exercise its discretionary declaratory power to open the doors of federal court to Plaintiff when Pennsylvania State Court is the more appropriate forum for resolution of the underlying dispute.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA NEWSPAPERS, INC.,	:	CIVIL ACTION
	:	
v.	:	
	:	
ARGENT VENTURES LLC	:	NO. 00-1808

O R D E R

AND NOW, this day of July, 2000, upon consideration of the Defendant's Motion to Dismiss Plaintiff's Declaratory Judgment Complaint (Docket No. 5), and Plaintiff's Opposition thereto, IT IS HEREBY ORDERED that the Defendant's Motion is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Plaintiff's Declaratory Judgment Complaint is **DISMISSED**.

BY THE COURT:

HERBERT J. HUTTON, J.